



**In The
Supreme Court of the United States**

October Term, 1978

NO. 78-1589

TOM BENSON CHEVWAY RENTAL & LEASING, INC.,
Petitioner,

v.

KENNETH WAYNE ALLEN AND WIFE, DOLORES ALLEN,
Respondents.

**RESPONDENTS' REPLY TO PETITION FOR A
WRIT OF CERTIORARI TO THE COURT OF CIVIL
APPEALS FOR THE EIGHTH SUPREME JUDICIAL
DISTRICT OF TEXAS**

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INDEX OF AUTHORITIES

CASES CITED:

- General Talking Pictures Corporation v. Western Electric Co.*, 304 U.S. 175, 82 L. Ed. 1273, 58 S. Ct. 849 (1938) 2
- NLRB v. Pittsburgh S.S. Co.*, 340 U.S. 498, 95 L. Ed. 479, 71 S. Ct. 453 (1951) 3
- Southern Power Co. v. North Carolina Publ. Serv. Co.*, 263, U.S. 508, 68 L. Ed. 413, 44 S. Ct. 164 (1924) 2
- U.S. v. Constantine*, 296 U.S. 287, 80 L. Ed. 233, 56 S. Ct. 223 (1935) 3

STATUTES CITED:

- 15 U.S.C. §1602(g) (1970) 2

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To The Supreme Court of the United States:

**PETITIONER, IN ITS PETITION FOR WRIT OF
CERTIORARI, MERELY SEEKS A FOURTH
ADJUDICATION OF EVIDENCE AND INFERENCES
DRAWN FROM IT DECIDED BY THE TRIER OF FACT**

Petitioner attempts to disguise its issues as significant questions of law of widespread importance concerning construction of the Federal Truth In Lending Act. That is simply not

the case. There is no dispute as to construction of the statute. The definition of credit sale is clearly set forth at 15 U.S.C. § 1602(g) (1970) and includes "... any contract in the form of a ... lease if the ... lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property ... involved and it is agreed that the lessee will become, or for no other or a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract."

The Trial Court held that the contract between Petitioner and Respondent was in the form of a lease, contained a nominal purchase option, otherwise met the definitions of "credit sale", and was subject to the Act. This holding is in accord with the plain meaning of the definition of "credit sale", and was affirmed by the Court of Civil Appeals and found to contain no reversible error by the Supreme Court of Texas.

Petitioner, on page eleven of its Petition for Writ of Certiorari, agrees that a "lease" *with* a nominal purchase option is subject to the Truth In Lending Act while a lease *without* a nominal purchase option is *not*. Thus there is no important question of Federal Law presented at all. Petitioner, Respondents, and the State Courts are in total agreement as to the law. Petitioner is merely seeking a fourth tribunal to adjudicate the fact questions and evidentiary questions peculiar to this case. Granting a Writ is not warranted merely to review the evidence or inferences drawn from it. *General Talking Pictures Corporation v. Western Electric Company*, 304 U.S. 175, 82 L. Ed. 1273, 58 S. Ct. 849 (1938); *Southern Power Co. v. North Carolina Publ. Serv. Co.*, 263 U.S. 508, 68 L. Ed 413, 44 S. Ct. 164 (1924).

Similarly, Petitioner's contentions concerning whether it is a "creditor" present nothing more than an evidentiary issue. It does not dispute the definition of "creditor" or any statutory construction, but merely asserts that the evidence was insufficient to support the judgment of the Trial Court, Court of Civil Appeals and Supreme Court of Texas. Petitioner has pointed to no conflict of decisions, no similar pending cases, no large amounts of money at stake, and no issues of public importance to be decided. Petitioner has cited no authority or reason to indicate that the granting of a writ would be proper. *See: U.S. v. Constantine*, 296 U.S. 287, 80 L. Ed. 233, 56 S. Ct. 223 (1935); *NLRB v. Pittsburth S.S. Co.*, 340 U.S. 498, 95 L. Ed 479, 71 S. Ct. 453 (1951).

THE EVIDENCE IN THE RECORD IN THIS CASE CLEARLY SUPPORTS THE HOLDING OF THE TEXAS STATE COURTS

The opinion of the Court of Civil Appeals noted that Petitioner's pre-printed form contained the following provision:

"Lessee may sell vehicle or Lessor may sell it at termination of lease. Proceeds over book value remitted 100% of lessee; any deficiency under book value is assumed by Lessee."

The Court recognized the obvious fact that the Allens became the owners of the automobile at the termination of the lease. The only right in the vehicle retained by Tom Benson Leasing was the right to the book value. All other rights were vested in the Allens. Noting that the book value of the automobile was to be \$1.00, the Court correctly held that "Appellee for the merely nominal consideration of \$1.00 had the option of becoming the owner of the motor vehicle upon full compliance with the provisions of the lease."

Petitioner's contentions that there was insufficient evidence to support the finding of the state courts that it was a "creditor" are refuted by the record. Every "lease" was a "credit sale" as defined by the Act. Additionally, as pointed out in the Opinion of the Court of Civil Appeals, Petitioner also sold used cars on credit without the guise of a lease. The Texas state courts were correct in holding that Petitioner was a creditor.

CONCLUSION

The record from the Trial Court and the Opinion of the Court of Civil Appeals show that the judgment was based upon and supported by the correct inferences from substantive evidence before the Court. But, even if the State Courts had erred in inferences from the evidence before them, Petitioner has shown no reason for the granting of a writ other than its attempt for a fourth adjudication of the factual issues in this case.

Respectfully submitted,

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